



REGISTERED
SPEED POST

F.No. 195/497/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..16/7/13

ORDER NO. 932/13-Cx DATED 15-7-2013 OF THE GOVERNMENT
OF INDIA, PASSED BY SHRI D.P.SINGH, JOINT SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE
ACT, 1944.

Subject : Revision Application filed under Section 35 EE of the
Central Excise Act, 1944 against the order-in-appeal
No.YDB/259/RGD/2011 dated 21.03.2011 passed by
the Commissioner of Central Excise (Appeals),
Mumbai-II

Applicant : M/s Tulsi Foundries Ltd., Sangli

Respondent : Commissioner of Central Excise, Raigad

ORDER

This revision application is filed by M/s Tulsi Foundries Ltd., Sangli against the order-in-appeal No.YDB/259/RGD/2011 dated 21.03.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II, Mumbai with respect to order-in-original passed by Assistant Commissioner of Central Excise (Rebate), Central Excise Commissionerate, Raigad.

2. Brief facts of the case are that the applicants exported the goods on payment of duty and filed rebate claims for rebate of duty paid by them. The rebate claims were rejected by the original authority on the ground that the applicant failed to submit duplicate copies of ARE-1s.
3. Being aggrieved by the impugned order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal on the ground of delay. The Commissioner (Appeals) held that the applicant failed to file the appeal before him within 60 days from date of communication of impugned order-in-original, and that though they filed the appeal before expiry of condonable period of 30 days, they failed to give proper and sufficient grounds for delay in filing the appeal.
4. Being aggrieved by the impugned order-in-appeal, applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government mainly on the following grounds:
 - 4.1 The applicants had clarified before the appellate authority that the delay was due to unavoidable circumstances at their factory, wherein the person looking after day to day working and other administrative and excise related matters i.e. the Vice President of the Company Shri Ajay Joshi, had given resignation on 09/06/2010 and had stopped attending the factory from 14/06/2010. The said Vice President who had decided to resign was very much

present on the date of receipt of the order i.e. 11/06/2010. However he failed to communicate to the management about the receipt of the said rejection order for the reasons best known to him. He left the organization on 14/06/2010 and did not update the management about the pendency of the said Order/appeal. After the said Vice President left the organization and on going through the documents of pending work so left by him showed the said Order lying unattended. Thereafter the applicant had tried to trace the rebate claim records for taking necessary action. From the available records they forwarded the same to their advocate for preparation of appeal paper book and the same was immediately filed. The Commissioner (Appeals) ought to have appreciated that the applicants would not benefit in delaying the matter and the same had occurred for circumstances beyond their control and the Commissioner (Appeals) had the power to condone the delay which is well within the condonable period.

4.2 The Applicants submit that the rebate claim should not be rejected on the ground that the duplicate copy of ARE-1s are misplaced by the Applicants. The rebate claim should have been considered based on the various documents so placed on record substantiating the export of goods and the rebate should have been sanctioned as the factum of export is not disputed. The Applicants humbly submit that there is no dispute on the facts that goods have been exported within six (6) months from the date of removal from the factory as visualize under Rule 18 read with Notification No. 19/2004 (N.T) dated 06/04/2004 as amended and there is no dispute on the fact that the rebate claim has been filed along with all the documentary evidences substantiating the duty paid nature of the goods and establishing the export of the products. The said rebate/refund claim has been filed well within one (1) years as mentioned under Section 11 B of Central Excise Act, 1944. It is a matter of record that the Duplicate copies of ARE-1s were misplaced by the factory staff, but they have placed on record the certified copy of the ARE-1s showing the details of the shipping bills and mate receipts and also bearing the endorsement of the Excise authorities and Customs

Authorities respectively. They have also placed on record the Shipping bill, Bill of Lading, Mate Receipt, Excise Invoice, Export Invoice and copies of ARE-1 which fully illustrates the export of goods. In fact the said co-relation of export documents is duly referred and reproduced in the brief facts of the order and there is no dispute on the same.

4.3 The applicant further stated that the benefit of rebate claim should not be denied when substantial condition of notification No.19/2004-CE (NT) are complied with. They placed reliance upon various case laws.

5. Personal hearing was scheduled in this case on 4.3.2013 & 27.6.2013. A short adjournment of hearing fixed on 4.3.13 was sought. However, the hearing fixed on 27.6.13, neither anybody appeared for hearing nor any adjournment sought.

6. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

7. The applicant's rebate claims were rejected by the original authority for the reason of non-submission of duplicate copies of AREs-1. Commissioner (Appeals) rejected the appeal filed by the applicant by holding that the applicant failed to file the appeal before him within 60 days from date of communication of impugned order-in-original, and that though they filed the appeal before expiry of condonable period of 30 days, they failed to give proper and sufficient grounds for delay in filing the appeal. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. For the purpose as above Government peruses the applicable provisions of Section 35(1) of the Central Excise Act 1944 which stipulates as under:

"Appeals to Commissioner (Appeals).— (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order :

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:....."

From above, it is clear that appeal is required to be filed within 60 days of the communication of order and Commissioner (Appeals) can condone the delay of only 30 days provided justified reasons exist for the said delay.

8.1 From above, it is clear that the applicant was required to file appeal before Commissioner (Appeals) within 60 days. The delay upto 30 days can be condoned, provided justified reasons exist for the said delay. When the delay is within the condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following the guidelines laid down by the Hon'ble Supreme Court in the case of collector Land Acquisition Anantnag Vs. M/s. Katji and others reported as 1987(28)ELT.185(SC).

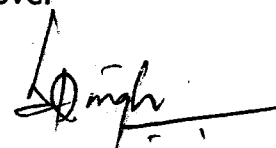
8.2 In this case, the applicant stated that the delay was occurred due to the reason that their vice president, who was looking after excise related matters resigned from the company on 9.6.2010 and stopped coming to factory from 14.6.2010 and he failed to communicate regarding receipt of the impugned order-in-original on 11.6.2010. Applicant has not given any reasoning supported by documentary evidences that justifying reasons for delay was occurred from the period 14.6.2010 till filing of the appeal before Commissioner (Appeals).

Time duration of about 2^{1/2} months lapsed from 14.6.2010 till filing of the appeal is required to be properly explained by the applicant. In case the concerned Vice-President has resigned and delay is attributed to communication gap due to his resignation, then there is a sufficient ground for condonation of delay and can be condoned as per principles laid down by Hon'ble Supreme Court in the case cited above. Therefore, in the interest of justice the case is required to be remanded back for fresh consideration of matter on merit by condoning delay if the reasons given by applicant for delay are found factually correct.

9. In view of above position, Government sets aside the impugned order-in-appeal and remands back the case to Commissioner (Appeals) for a fresh consideration of matter taking into account the above observations. A reasonable opportunity of hearing will be afforded to the parties.

10. The revision application is disposed off in terms of above.

11. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Tulsi Foundaries Ltd.,
Plot No.E-2, MIDC
Kupwad Block
Sangli-416436

Attendant

8
16/17

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

Order No. 932/2013-Cx dated 15-7-2013

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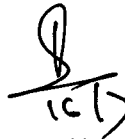
1. Commissioner of Central Excise & Customs, Raigad Commissionerate, 4th Floor, Kendriya Utpad Shulk Bhawan, Sector 17, Plot No.1, Khandeshwar, Navi Mumbai – 410 206
2. Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhawan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.
3. The Assistant Commissioner of Central Excise (Rebate), Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot No. 1, Khandeshwar, New Panvel – 410 206.
4. Shri R.K.Sharma, Advocate & Shri R.K.Dash, Consultant, R.K.Sharma & Associates, 157, 1st Floor, DDA Office Complex, CM-Jhandewalan Extension, New Delhi-110055

5. PA to JS (RA)

6. Guard File

7. Spare copy

ATTESTED



(B.P.Sharma)

OSD (Revision Application)

